IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 183 of 2000
with
COMPANY PETITION No. 97 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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BOARD OPINION - Petitioner(s)

Versus

M.D.M/S.SARIGAM STEELS LTD. & 7 - Respondent(s)

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Appearance :

BOARD OPINION for Petitioner No(s).: 1.

NOTICE SERVED for Respondent No(s).: 1, 2,4.
DR SONIA HURRA for Respondent No(s).: 3.
NOTICE UNSERVED for Respondent No(s).: 5.
SERVED BY RPAD - (N) for Respondent No(s).: 6,7.
NOTICE NOT RECD BACK for Respondent No(s).: 8.

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CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date : 14/07/2005

ORAL JUDGMENT

1. Company Petition No.183/2000 has been registered on the basis of opinion forwarded by the Board for Industrial and Financial Reconstruction (BIFR) under Section 20(1) of Sick Industrial Companies (Special Provisions) Act, 1985, on 4.7.2000 to the Registrar of this Court. The BIFR has observed in its order dated 7.6.2000 that on consideration of the facts of the case and submissions made the Board has come to the conclusion that the promoters are not serious in rehabilitating the Company nor were they resourceful enough to mobilize the fund required for paying the dues to the satisfaction of the secured creditors. As such, there is no rehabilitation proposal with means of finance fully tied up, for consideration of the Board despite ample opportunities having been given to all concerned. In these circumstances, the Board has confirmed its prima facie opinion that the Sick Industrial Company M/s.Sarigam Steel Ltd., is not likely to make net worth exceed its accumulated losses within a reasonable time while meeting all its financial obligations and that the Company as a result thereof is not likely to become viable in future and hence it is just, equitable and in public interest that it is wound up under Section 20(1) of

the Act.

2. The Court has issued notice and order was passed on 9.1.2001, whereby the petition was admitted. The Court has also passed an order of advertisement directing the operating agency to give advertisement in “Indian Express” English Daily, Vadodara Edition and “Gujarat Mitra” Gujarati Daily, Surat Edition, and the said advertisement should also be advertised in Government Gazette. The Court has also appointed the O.L attached to this Court as Provisional Liquidator with a direction to take charge of all movable as well as immovable properties of the Company and has further directed the report to this Court. Subsequent to the aforesaid order IDBI has filed Company Application No.106/2001 seeking review of an order dated 9.1.2001, and while disposing off the said application this Court directed the Bank of Baroda, instead of applicant – IDBI to issue advertisement in daily newspapers as regards the admission of the petition and final hearing of the said petition. The said Review Application was disposed of by this Court on 11.4.2005. The Court has directed the Bank of Baroda instead of applicant – IDBI to give advertisement regarding hearing of the petition by stating that the hearing of the

petition should be taken place on 18.6.2001 and it was also made clear that the Bank of Baroda would bear the expenses for the same. However, the rest of the order was remained as it was.

3. It appears that the Court has thereafter passed further order on 27.9.2002, wherein it was observed that the O.L. Could not take possession of the movable and immovable properties of the Company in view of the fact that the properties are in possession of the Court Receiver appointed by the High Court of Bombay in Suit No.584/1997. The Court has also made clear in the said order that since the Review Application was disposed off, the main Company Petition was required to be finally disposed of.

4. Pursuant to the order passed by this Court earlier on 9.1.2001, directing the Bank of Baroda to issue advertisement, the said Bank of Baroda has issued advertisement and affidavit of publication was filed before this Court on 17.10.2001 alongwith the relevant newspaper clippings as well as copy of the Government Gazette. All the formalities with regard to admission and advertisement of the Company Petition were over and Review Petition was also disposed of by this Court. The petition could have

been disposed of much earlier, however it was not placed for hearing for quite a long time and hence winding up order could not be passed.

5. From the plain reading of the order passed by the BIFR and looking to the other developments such as the properties of the Company being attached by the Court Receiver Bombay, pursuant to the order passed by the Bombay High Court and also having regard to the fact that the Company is virtually closed for the last many 2 years and that there is no possibility of revival of the Company and that Company is not in a position to restart its business activities, the Court is of the view that the Company has lost its financial substratum long back and it has totally failed to discharge its financial liability towards the secured and unsecured creditors. It is, therefore, not in the interest of members, creditors or even in the public interest to allow such Company to remain in existence merely on paper. The Court, therefore, thinks it just and proper to pass final winding up order in the matter. Accordingly, the Company is ordered to be wound up and O.L who was appointed as Provisional Liquidator will now work as the Liquidator of the Company and he will exercise all powers conferred on him under

the Companies Act, 1956. The O.L is further directed to ascertain with regard to the possession of movable and immovable properties of the Company and take out necessary proceedings seeking further order of this Court. The O.L is further directed to invite the claim of the creditors and workers of the Company and file necessary report. If there is any property which is not in possession of the Court Receiver, the O.L is directed to take possession forthwith under intimation to the Ex-director as well as the secured creditors of the Company and before appointing any security agency or valuer to take the inventory of the assets of the Company he shall take prior permission of this Court.

6. With these directions and observations this Company Petition No.183/2000 is accordingly disposed off.

7. Since the Company Petition No.97/1997 is also for winding up of the respondent Company and since the winding up order is already passed today in Company Petition No.183/2000 this petition does not survive and it has become infructuous. Accordingly, the Company Petition No.97/1997 is also disposed off. Office is

directed to place copy of this order in the file of Company Petition No.97 of 1997.

(K.A.PUJ,J.)

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